

Application No.: 10/642,527

Docket No.: SPINE 3.0-437 CIPCIPCIP

**IN THE DRAWINGS:**

Please replace sheets 1-24 with the attached replacement sheets submitted herewith.

Attachment:

24 replacement sheets

Annotated sheets:

Page 23, Fig. 8z, Reference character 1707

REMARKS

Applicant submits these remarks and amendments in response to the Official Action dated September 22, 2005. In the Official Action, the Examiner alerts the Applicants to the fact that an application in which the benefit of an early application is desired must contain specific references to the prior applications in the first sentence of specification. In response to this, Applicants have amended the first sentence of the present application to thereby properly claim benefit to prior applications. No new matter has been added to the application as a result of this amendment.

The Examiner also objects to the drawings as failing to comply with 37 C.F.R. 1.84(b)(5) because the drawings include reference characters not mentioned in the description. In response to this, Applicants have amended the specification and substitute herewith a new specification. The lengthy specification has now been checked to the extent necessary to determine the presence of all minor errors. Thus, the new substitute specification includes changes that eliminate possible minor errors that the Applicants are aware of. No new matter has been added to the present application as a result of this amendment.

CLAIM REJECTIONS - 35 U.S.C. §112

Claims 11-19 are rejected under 35 U.S.C. §112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner asserts that there is insufficient antecedent basis for the "first part" and the "second part" in claim 11. In response to this rejection, Applicants have amended claim 9 from which claim 11 depends to thereby provide the correct antecedent basis. Additionally, the Examiner objects to claim 19 as lacking in sufficient antecedent basis for the phrase "the ball's curvate

recesses' boundaries." In response to this rejection, Applicants have amended claim 19 to thereby provide proper antecedent basis. No new matter has been added as a result of these amendments.

**CLAIM REJECTION - 35 U.S.C. §102 - HARRINGTON**

Claims 9-11, and 13-20 are rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,893,889 to *Harrington*. In response to this rejection, Applicants have amended claim 9 to specifically recite that the spring member is disposed between the first and second part of the second baseplate. Thus, the spring member is housed within the second baseplate such that the spring member does not contact additional elements. This differentiates the present invention, and specifically claim 9 of the present application from *Harrington* in that *Harrington* is limited to disclosing a spring member such as absorbing plug 69 which is positioned within a cavity of a baseplate, and is not positioned between two elements of the same baseplate, as included within claim 9 of the present application. In addition, *Harrington* discloses that the spring member is positioned between a post and a portion of the baseplate member, as contrasted with claim 9 in the present application. Although, *Harrington* does show a baseplate member having two parts, the two parts are attached to one another such that they cannot be moved relative to each other during natural employment of the device. Thus, the two parts do not move relative to one another as pressure is placed on the spring member of *Harrington*. This is contrasted with what is included in claim 9 of the present application. Thus, claim 9 as well as its dependent claims 10-16 should be deemed to be in condition for allowance and deemed patentable.

In addition, claim 17 also includes the limitation that the spring member is disposed between the first part and the second part such that a compressive load applied to the

outwardly facing surface of the baseplate is born by the spring member. Any force applied to the outwardly facing structure in *Harrington* is not translated to the spring member, but rather simply remains constant. Additionally, if one were to assume that the shock absorbing member 68 is equivalent to the spring member of the present invention, *Harrington* would still not anticipate the present invention as the shock absorbing member 68 is positioned between two baseplates as opposed to between a first part of a baseplate and a second part of the same baseplate. Thus, for similar arguments made with regard to claim 9, claim 17 as well as dependent claims 18-20 should also be deemed patentable.

**CLAIM REJECTION 35 U.S.C. §103 - HARRINGTON**

Claim 12 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Harrington*. However, since claim 12 depends from claim 9, arguments similar to those made with regard to claim 9 are asserted and claim 12 should be deemed allowed and patentable.

**DOUBLE PATENTING**

Claims 1-6, 8, 9, 14, 15, 17 and 19 are provisionally rejected under the Judicially Created Doctrine of Obviousness-Type Double Patenting as being unpatentable over claims 1, 4-8, 10, 12, 15, 16, 19, 20 of co-pending application number 10/642,528. In response to this rejection, Applicants submit herewith a Terminal Disclaimer thereby removing the co-pending application from the user's prior art. Additionally, claims 1, 2, 5-7, 9, 13-20 are provisionally rejected under the same doctrine as being unpatentable over claims 1, 2, 5, 7, 9, 13-20 of co-pending application number 10/642,524. Applicants thus submit a second Terminal Disclaimer, thereby removing co-pending application no. 10/642,524 as prior art.

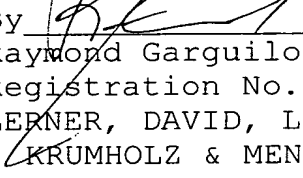
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 22, 2006

Respectfully submitted,

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